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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

EGYPT */

[20 November 1990]

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*/ The present document contains replies of the Government of Egypt to questions raised by the Committee against Torture at its second session during the consideration of the initial report of Egypt on 20 April 1989 (see CAT/C/SRs.14 and 15); see also the annual report of the Committee against torture: Official Records of the General Assembly, forty-fourth session, Supplement No. 46 (A/44/46), paras. 123-144).

Replies of the Government of Egypt to questions raised by the Committee against Torture as they appear in the relevant paragraphs of the annual report of the Committee

1. Paragraph 124

Egypt will provide detailed information concerning the application of each article of the Convention against Torture in its next report to the Committee.

2. Paragraph 128

In reply to the Committee's question as to whether the definition of torture contained in article 126 of the Egyptian Penal Code has been amended in accordance with the definition given in article 1 of the Convention, it should be noted that the Convention, having been ratified and promulgated by a legislative instrument, has the same legal effect as any other legislation currently in force, as provided for in article 151 of the Constitution which stipulates as follows:

> "The President of the Republic concludes treaties and submits them to the People's Assembly, together with relevant information pertaining thereto. They acquire the effect of law after they have been signed, ratified and published in accordance with the prescribed procedures. However, peace treaties, alliances and trade and navigation agreements modifying or affecting the territorial or sovereign rights of the State or entailing public expenditure not provided for in the budget require approval by the People's Assembly."

In our opinion, therefore, this definition can be invoked before the Egyptian courts. However, with regard to torture and other cruel, inhuman or degrading treatment or punishment, the Egyptian Constitution, the Penal Code and the Code of Criminal Procedure draw a distinction between acts that constitute an offence and acts that do not constitute an offence. This distinction is always in favour of the victim of torture. Article 42 of the Egyptian Constitution stipulates that:

> "Any citizen who is arrested or detained or whose freedom is in any way restricted must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm may be inflicted upon him and he must not be detained or imprisoned in places other than those subject to the legal provisions governing prisons. Any statement which is proved to have been made by a citizen under the influence or threat of such harm shall be considered null and void."

Article 40 of the Code of Criminal Procedure stipulates that: "No person shall be arrested or detained except by order of the authorities legally empowered to do so. Every person under arrest or in detention must be treated in a manner conducive to the preservation of his human dignity and must not be harmed physically or mentally."

Article 302 of the Code of Criminal Procedure further stipulates that: "Judges have full freedom to deliver judgement in accordance with the conclusions that they have reached. However, they must not base their judgements on evidence that has not been submitted during the hearing. Any statement which is proved to have been made by a defendant or witness under coercion or threat must be considered null and void."

Accordingly, the law leaves it to the discretion of the judge to decide whether a statement made by a defendant or a witness was obtained through torture, coercion, ill-treatment or the threat thereof. If the judge finds that the statement was obtained by any of the above-mentioned means, he must regard it as invalid and must not take it into account when handing down his judgement, even if the said statement is true. This principle has been frequently emphasized in rulings of the Court of Cassation.

When prescribing the penalty for coercion and ill-treatment, the Penal Code draws a distinction between coercion of a person suspected of having committed an offence and coercion of a person who is not a suspect. In the former case, article 126 of the Penal Code stipulates that: "Any public servant or official who orders, or participates in, the torture of an accused person with a view to inducing the said person to make a confession shall be punished by hard labour or imprisonment for a term of 3 to 10 years. If the victim dies, the penalty shall be that prescribed for murder." However, if the harm is not inflicted with a view to the extraction of a confession, it falls within the category of ill-treatment, for which article 129 of the Penal Code prescribes the following penalty: "Any official, government employee or public servant who, in his capacity as such, treats people in a harsh manner that detracts from their dignity or causes them to suffer physical pain shall be punished by a term of up to one year's imprisonment or a fine not exceeding 200 Egyptian pounds." If the coercion of a person who is not a suspect exceeds minor harm, its perpetrator is liable to the criminal penalties prescribed in the Penal Code.

Egyptian law therefore broadens the definition of torture, as contained in the Convention. In fact, under the provisions of article 57 of the Constitution: "Any infringement of the personal freedom or privacy of citizens or of the other rights and public freedoms guaranteed by the Constitution and the law constitutes an offence and criminal or civil proceedings in connection therewith are not subject to any statute of limitations. The State guarantees fair compensation for any person who is the victim of such an offence."

To this end, article 15, paragraph 2, of the Code of Criminal Procedure stipulates that: "Criminal actions in respect of the offences specified in articles 117, 126, 127, 282, 309 bis and 309 bis (a) of the Penal Code shall not be statute-barred if such offences occur after the date of entry into force of this Code."

This clearly shows that, in the eyes of the law, torture is regarded as a particularly serious offence, since criminal and civil actions in this respect are not subject to the legal provisions of the statute of limitations. Furthermore, the State is obliged to guarantee fair compensation for the victim.

READEX

3. Paragraph 129

The figure of approximately 450 complaints of torture during the last five years, as given in the report, was not based on accurate statistics. The records actually show that 432 complaints were registered, of which 26, concerning accusations of torture by 41 police officers, were referred to the Criminal Court at Cairo. On 30 June 1987, the Court handed down a judgement in which the accused were acquitted of the charges brought against them in view of the inadequacy of the evidence submitted to substantiate the accusation of torture. The Department of Public Prosecutions decided not to bring charges in connection with 350 of the complaints in view of the lack of evidence. A further 34 files were subsequently closed due to the lack of evidence against the persons accused of torture. At the present time, 22 complaints are still under investigation (see the attached statistics from the Department of Public Prosecutions in this regard).

4. Paragraph 130

Under Egyptian law, an examining magistrate is empowered to order preventive detention. In accordance with articles 64, 65 and 67 of the Code of Criminal Procedure, the examining magistrate must be a judge or a member of the judiciary appointed to investigate a specific case at the request of the Department of Public Prosecutions or the Minister of Justice, depending on the circumstances. Under the provisions of article 134 of the Code of Criminal Procedure: "If, after questioning the accused or in the event of the latter's abscondment, he finds that there is sufficient evidence, and provided that the offence in question constitutes a felony or a misdemeanour punishable by a term of more than three months' imprisonment, the examining magistrate may order the accused to be remanded in custody. An accused person can always be remanded in custody if he has no known domicile in Egypt and if the offence is punishable by imprisonment."

In actual practice, however, most investigations are conducted by the Department of Public Prosecutions, consisting of the Attorney General and his staff. Article 20 of the Code of Criminal Procedure stipulates that: "A detention order issued by the Department of Public Prosecutions shall be valid only for a period of four days from the date on which the accused person is arrested, or from the date on which he is brought before the Department of Public Prosecutions if he had been arrested at a prior date."

Article 202 of the Code of Criminal Procedure stipulates that: "If the Department of Public Prosecutions wishes to extend the period of remand in custody, it must ensure that the case file is submitted, before the expiration of the four-day time-limit, to the judge of summary jurisdiction, who shall issue an appropriate order after listening to the statements of the accused and of the Department of Public Prosecutions. The judge may extend the remand order for a further period or successive periods, for a total duration of up to 45 days."

Under the terms of article 203 of the Code of Criminal Procedure: "If the investigation has not been completed before the expiration of the period of remand in custody specified in the preceding article, the Department of Public Prosecutions must submit the case file to the Misdemeanours Court of Appeal, meeting in chambers, which shall issue an appropriate order in accordance with the provisions of article 143."

Article 143 of the Code of Criminal Procedure further stipulates that: "The case file must be referred to the Misdemeanours Court of Appeal, meeting in chambers, (this is a court of first instance consisting of three judges). After listening to the statements of the accused and of the Department of Public Prosecutions, the court may decide either to prolong the remand in custody for successive periods not exceeding a total of 45 days, if so required in the interests of the investigation, or to release the accused with or without bail. However, when the accused has been remanded in custody for three months, the Attorney-General must be instructed to take whatever measures he may deem necessary to conclude the investigation."

The final paragraph of this article reads as follows: "The period of remand in custody shall in no case exceed six months, unless the accused has been informed, before the expiration of that period, that he is to be referred to the competent court. If the accused is charged with a felony, the period of remand in custody shall not exceed six months unless, before the expiration of that period, the competent court has ordered its extension for a period of up to 45 days, with the possibility of further extension for another similar period or periods; otherwise, in all cases, the accused must be released."

As can be seen from these provisions, the maximum period of time during which a person accused of a misdemeanour can be remanded in custody is six months and this time-limit is constantly monitored by the judiciary. The remand order can be issued by the Department of Public Prosecutions, within the stipulated four-day period, or by the judiciary itself in particular cases in which a judge is assigned to conduct the examination. Every detainee has the right to communicate with his family and also has access to legal defence, as provided for in article 71 of the Constitution which stipulates as follows: "Every person who is arrested or detained must be informed immediately of the reasons for his arrest or detention. He has the right to communicate with any person whom he wishes to advise of what has happened or from whom he may wish to seek assistance in the manner prescribed by law."

In the light of this principle, article 139 of the Code of Criminal Procedure stipulates that: "Every person under arrest or remanded in custody must be informed immediately of the reasons for his arrest or detention. He has the right to communicate with any person whom he wishes to advise of what has happened and he is entitled to avail himself of the services of a lawyer. He must be notified promptly of the charges brought against him."

With regard to the right of the accused to defend himself, article 124 of the Code of Criminal Procedure stipulates that: "Except in cases of flagrante delicto or where there is a compelling reason to fear that evidence might be lost, the criminal investigation officer shall not interrogate a suspect or confront him with other suspects or witnesses until the suspect's lawyer, if he has one, has been invited to be present.

The accused must state the name of his lawyer so that it can be recorded by the clerk of the court or by the prison warden. Alternatively, this statement or declaration may be made by his lawyer."

Under the terms of article 125, paragraph 2, of the Code of Criminal Procedure: "The accused shall under no circumstances be separated from his legal counsel during the examination". This is in accordance with the provisions contained in articles 67 and 69 of the Constitution ("The accused is presumed innocent until proved guilty at a judicial hearing in which his right to defend himself is guaranteed. Every person accused of a felony must have a lawyer to defend him"; "The right of defence by assignment or proxy is guaranteed"). Legal provision is made to ensure that persons lacking financial resources are able to resort to the courts in defence of their rights.

These matters are regulated by the Code of Criminal Procedure, article 214 of which stipulates that, when a person accused of a felony is referred to a criminal court by the Department of Public Prosecutions, the latter has the right, ex officio, to appoint a lawyer to defend the said person if he has not already retained a lawyer to that end. The criminal court has a similar obligation to ensure that the accused has access to legal counsel during the hearing of his case.

The various cases of flagrante delicto recognized in Egyptian law are defined in article 30 of the Code of Criminal Procedure, which specifies that: "An offender is deemed to be apprehended in flagrante delicto if he is arrested during or shortly after the commission of an offence. This also applies if the offender is pursued by the victim or by a public hue and cry after the commission of the offence, or if the offender is apprehended, shortly after the commission of the offence, and found to be in possession of instruments, weapons, property, papers or other objects from which it can be deduced that he was the perpetrator of the offence or an accomplice therein, or if, at the time of his apprehension, he bears traces or marks which constitute presumptive evidence to that effect."

5. With regard to the effects of the Emergency Act on the Convention, none of the provisions of the ordinary or exceptional legislation (the Emergency Act falls within the latter category) advocate torture, coercion or ill-treatment. Consequently, the Emergency Act is in no way incompatible with the Convention, since it does not contain any stipulation that could suspend the implementation of any of the provisions of the Constitution. In fact, article 71 of the Constitution stipulates that any person who is arrested or detained, or any third party, may lodge a legal appeal against the measure taken to restrict his personal freedom and legal provision is made for this right of appeal in such a way as to ensure that a judicial decision is taken thereon within a specified period of time, failing which the arrested or detained person must be released. Article 3 bis of the Emergency Act summarizes the constitutional principles governing detention and stipulates as follows:

> "Every person arrested or detained in accordance with the preceding article must be informed immediately of the reasons for his arrest or detention and has the right to contact any person whom he may wish to notify of what has happened. He is also entitled to avail himself of the services of a lawyer and must be treated in the same way as any other person remanded in custody.

The detainee, and any other persons concerned, may lodge a complaint against his arrest or detention if he is not released within 30 days from the date of the said arrest or detention. Such complaints are submitted, without payment of any charges, to the Higher State Security Court constituted in accordance with the provisions of this Act.

The Court must hand down a substantiated decision on the complaint within 15 days from the date of its submission and after hearing the statements of the arrested or detained person, failing which the latter must be released immediately.

If an order is issued for the release of the said person, or if no decision is taken on the complaint within the time-limit specified in the preceding paragraph, the Minister of the Interior may appeal against the release order within 15 days from the date of its issue or from the expiration of the above-mentioned time-limit.

If the Minister of the Interior appeals against the order, his appeal must be referred to another court within 15 days from the date of its submission and a decision must be taken thereon within 15 days from the date of its referral; otherwise, the detainee must be released immediately and the court order becomes final in such an event.

Any person whose complaint has been rejected has the right to submit a new complaint 30 days after the date on which it was rejected."

6. Paragraph 131

The question as to whether evidence obtained by torture is completely excluded has already been answered. As already indicated, the Constitution and the Code of Criminal Procedure emphatically reject such evidence and the Court of Cassation has also stressed the need to exclude such evidence, even if the statements that it comprises are true.

With regard to the extraterritorial jurisdiction of the Egyptian courts in cases involving offences of torture, the relevant principles are set forth in articles 1, 2, 3 and 4 of the Penal Code. Although their jurisdiction does not extend to offences of torture committed outside Egyptian territory, the Egyptian courts are competent to hear any case involving the commission of such an offence within Egyptian territory, even if some of the persons accused thereof have fled the country or if a person has committed an act outside Egypt which renders him criminally liable, as principal or accomplice, in respect of an act of torture that has taken place, wholly or in part, inside Egypt.

The Constitution prohibits the extradition of political refugees. In the case of criminals, extradition is governed by the international conventions and agreements concluded between Egypt and foreign States. These conventions and agreements normally require the completion of legal formalities before criminals can be extradited. Egypt has never extradited any person to a State in which it knew that he would be tortured.

7. As stipulated in the Constitution, the State guarantees fair compensation for any person who is the victim of an act of torture. Since this compensation is of a pecuniary nature, it cannot be predetermined and is awarded by the courts in the light of the circumstances of each individual case, the gravity of the act and the extent of the damage resulting therefrom. The State provides social and medical services, free of charge, for all its citizens. Medical centres have been established in all the villages and towns throughout the Republic and are open to any person requesting medical assistance. No medical centres have been established specifically for victims of torture, since the phenomenon of torture in Egypt is not extensive or serious enough to require special centres; the few individual cases concerned are dealt with either by the courts or the medical centres and hospitals that have been established throughout Egypt.

8. Paragraph 133

With regard to the education of public officials, instruction in human rights is provided at the faculties of law in Egyptian universities and also at the specialized institutes of the Police Academy and in the special human rights centres that have been established by some university colleges. An Egyptian Human Rights Centre and an Arab Human Rights Centre have also been established and these specialized centres, together with the Bar Association, the Press Association and other professional organizations, organize seminars on human rights and publish information bulletins on their activities in this field.

9. Paragraph 134

With regard to article 11 of the Convention, concerning mechanisms for the inspection of prisons, the authorities responsible for such inspections are the Department of Public Prosecutions, the President of the Court of Cassation, the presidents of the courts of appeal and first instance and the examining magistrates, as stipulated in article 42 of the Code of Criminal Procedure and articles 85 and 86 of the Prisons Act No. 396 of 1956. Although all these authorities are empowered to inspect prisons and, like the wardens or governors of the prisons, have an obligation to receive complaints from their inmates, the Department of Public Prosecutions is solely responsible for the investigation of such complaints.